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The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JIANDONG HUANG, SEJUN SONG, TONY J. KOZLIK,  
RONALD J. FREIMARK and JAY W. GUSTIN

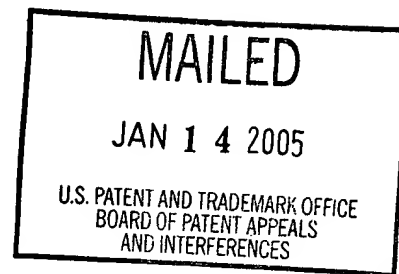
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Appeal No. 2004-2168  
Application No. 09/513,010

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ON BRIEF

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Before KRASS, JERRY SMITH and MACDONALD, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-10 and 31-52. Claims 11-30 have been cancelled and form no part of this appeal.

The invention pertains to redundant network control. In particular, a selection is made of either a primary or a redundant network connection for sending and receiving data

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between a pair of networked nodes. The path selected to communicate is selected independently, based on determined network states for each pair of networked nodes.

Representative independent claim 1 is reproduced as follows:

1. A method of managing the state of a computer network with redundant network connections, comprising:

determining the state of a primary network connection between each pair of networked nodes;

determining the state of a redundant network connection between each pair of networked nodes; and

selecting either the primary network connection or the redundant network connection for sending and receiving data between each pair of networked nodes, such that the network path selected to be used to communicate is selected independently based on the determined network states for each pair of networked nodes.

The examiner relies on the following references:

Momona	6,434,117	Aug. 13, 2002
		(filed Mar. 5, 1999)
Kohno	5,153,874	Oct. 6, 1992

Claims 1-9, 31-40 and 42-51 stand rejected under 35 U.S.C. § 102(b) as anticipated by Kohno.

Claims 10, 41 and 52 stand rejected under 35 U.S.C. § 103 as unpatentable over Kohno in view of Momona.

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Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

OPINION

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.), cert. dismissed, 468 U.S. 1228 (1984), citing Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

It is the examiner's position that Kohno anticipates the subject matter of claims 1-9, 31-40 and 42-51 by (with regard to claim 1) determining the state of a primary network connection between each pair of network nodes and determining the state of a redundant network connection between each pair of network nodes at column 3, lines 35-52 and Figures 3 and 4; and selecting either the primary network connection or the redundant network connection for sending and receiving data between each pair of network nodes, such that the network path selected to be used to communicate is selected independently based on the determined

network states for each pair of network nodes, at column 3, lines 5-7.

Appellants' contention is that Kohno does not teach the "selecting" step because Kohno requires sending all data through both lines (citing the abstract, lines 1-3) and that "because Kohno is not operable to select a line over which to send data but is simply operable to notify a user of differences detected between the lines indicating an abnormality, Kohno does not anticipate the pending claims..." (principal brief-page 4). Appellants argue nothing else regarding the rejection of claims 1-9, 31-40 and 42-51 under 35 U.S.C. § 102(b).

Thus, the issue between appellants and the examiner is the meaning to be given the claimed "either...or..." language. Appellants argue that this grammatical structure "has the plain English meaning of indicating alternatives, where only one or the other of the alternatives is to be employed, and does not allow selection of both alternatives or no selection..." (principal brief-page 4). The examiner takes the opposite view, finding that the claim language, "selecting either the primary network connection or the redundant network connection" permits the selection of the primary connection, the redundant selection, or both connections, but does not permit the selection of neither

connection. Thus, it is the examiner's position that since Kohno "teaches selecting the primary network connection, regardless if he also selects the secondary primary network, the limitation is met" (answer-page 10).

We agree with the examiner.

It appears to us, that as broadly claimed by appellants, Kohno, clearly teaches the determination of "normal" and "abnormal" states of redundant transmission lines, and, based on this determination, a transmission line determined to be "normal," a switch means selects a "normal" transmission line to be connected to a receiver.

With regard to the "either...or..." language, it is reasonable, in our view, for the examiner to take the position that this means a selection of a primary connection or a redundant connection, or both. If appellants intended the language to mean what they now argue, i.e., that only one or the other of the alternatives is selected, but does not allow the selection of both alternatives or no selection, it appears to us that the claim could have been easily amended to say just that, e.g., "selecting either the primary network connection or the redundant network connection, but not both."

Since we deal with the claim language before us, and we view the examiner's position as being reasonable while appellants argument does not convince us of any error in the examiner's position, we will sustain the rejection of claim 1, as well as claims 2-9, 31-40 and 42-51 under 35 U.S.C. § 102(b).

With regard to the rejection of claims 10, 41 and 52 under 35 U.S.C. § 103, while page 3 of the principal brief indicates that all claims will stand or fall together "as a single group," appellants do argue that Momona fails to consider redundant networking, routing data through an intermediate node in a redundant network to provide communication between two nodes, and to select a connection at all. Moreover, appellants argue, there is no motivation for combining Momona with Kohno because "the function of Momona resembles neither the function and purpose of Kohno nor the function and purpose of the present invention" (principal brief-page 6).

Appellants' arguments regarding Momona's failings are not persuasive of nonobviousness under 35 U.S.C. § 103 because the rejection is based on a combination of references and Kohno is presented by the examiner for the teachings alleged by appellants to be absent from Momona.

We are also not convinced by appellants' lack of motivation argument. Claims 10, 41 and 52 merely extend the claimed subject matter from selecting a connection between two nodes to selecting connections between a first node and intermediate nodes along the way to a second node. We find nothing unobvious about this in view of our finding of unpatentable subject matter in the independent claims, since the independent claims recite the selection of a connection between a pair of networked nodes and claims 10, 41 and 52 merely extend this to selecting a connection between a first node and an intermediate node and from the intermediate node to a second node. However, each selection is merely a selection of a connection between a pair of nodes, as recited, for example, in independent claim 1.

Moreover, the examiner has offered evidence, via Momona, of the notoriety of providing for intermediate nodes between a pair of nodes and the skilled artisan would clearly have found it obvious to provide for such intermediate nodes in Kohno. Since Kohno provides for selection of a connection between a pair of nodes, it clearly would have been obvious to provide for the selection of a connection between any two nodes, including selecting a connection between a first node and an intermediate

node, as well as selecting between an intermediate node and a second node.

AFFIRMED

  
ERROL A. KRASS )  
Administrative Patent Judge )

*Jerry Smith*  
JERRY SMITH  
Administrative Patent Judge

  
ALLEN R. MACDONALD  
Administrative Patent Judge

EK/RWK



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